

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

CALLAWAY GOLF COMPANY,

Plaintiff,

v.

ACUSHNET COMPANY,

Defendant.

C. A. No. 06-91 (SLR)

**[PROPOSED] ORDER REGARDING CALLAWAY GOLF COMPANY'S  
MOTION FOR SUMMARY JUDGMENT OF NO ANTICIPATION**

AND NOW, the Court, having considered Callaway Golf Company's Motion for Summary Judgment of No Anticipation in this case and all supporting memoranda, declarations and exhibits filed by Callaway Golf Company and Acushnet Company's opposition to the motion and all supporting memoranda, declarations and exhibits,

And having determined that Callaway Golf is entitled to a summary judgment pursuant to FRCP 56 that:

- (1) the Nesbitt '193 patent does not contain or incorporate by reference any discussion of polyurethane, and therefore the Nesbitt '193 patent does not anticipate any of the asserted claims that recite polyurethane for the outer cover layer (claims 1, 2, 4 and 5 of the '293 patent; claims 4 and 5 of the '130 patent; claims 1-11 of the '156 patent; and claims 1 and 3 of the '873 patent);
- (2) the Nesbitt '193 patent also does not disclose (expressly or inherently) an outer cover layer that has a Shore D value of 64 or less, and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1, 2, 4 and 5 of the '293 patent; claims 1, 2, 4 and 5 of the '130 patent, claims 1-3, 5 and 9 of the '156 patent; and claims 1 and 3 of the '873 patent);
- (3) like the Nesbitt '193 patent, the Proudfit '187 patent does not disclose (expressly or inherently) an outer cover layer that has a Shore D value of 64 or less, and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1, 2, 4 and 5 of the '293 patent; claims 1, 2, 4

and 5 of the '130 patent, claims 1-3, 5 and 9 of the '156 patent; and claims 1 and 3 of the '873 patent); and

- (4) Acushnet cannot show that the Wilson Ultra Tour Balata golf ball has an inner cover layer that comprises a blend of two or more low-acid ionomers, and therefore it does not anticipate any of the asserted claims that contain that limitation (claims 1-2 of the '293 patent; claims 1-2 and 4 of the '130 patent; claims 1-7 of the '156 patent; and claim 1 of the '873 patent).

IT IS HEREBY ORDERED that Callaway Golf Company's Motion for Summary Judgment of No Anticipation is GRANTED.

SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2007.

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United States District Judge